

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #16	CCRB Case #: 201800618	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/20/2018 5:30 AM	Location of Incident: § 87(2)(b)	Precinct: 28	18 Mo. SOL 7/20/2019	EO SOL 7/20/2019	
Date/Time CV Reported Sun, 01/21/2018 2:45 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 01/21/2018 2:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. DTS Andrew Miles	5491	943569	030 PCT
3. SGT Ari Levine	00892	936945	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT Lourdes Soto	00000	924829	030 PCT
2. POM Malcial Tuero	17578	946346	030 PCT
3. POM Robert Lenihan	00746	949202	030 PCT
4. POM James Doheny	08479	950336	030 PCT
5. POM David Roussine	22070	953344	BX SVS
6. POF Anita Moore	00393	939063	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.SGT Ari Levine	Abuse: Sergeant Ari Levine entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.DTS Andrew Miles	Abuse: Detective Andrew Miles entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.SGT Ari Levine	Abuse: Sergeant Ari Levine searched § 87(2)(b)	§ 87(2)(b)
E.DTS Andrew Miles	Abuse: Detective Andrew Miles searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
F. Officers	Abuse: Officers searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
G. Officers	Abuse: Officers damaged § 87(2)(b) property.	§ 87(2)(b)
H.DTS Andrew Miles	Abuse: Detective Andrew Miles entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
I.SGT Ari Levine	Abuse: Sergeant Ari Levine entered § 87(2)(b) in Manhattan.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J.DTS Andrew Miles	Abuse: Detective Andrew Miles searched § 87(2)(b) [REDACTED], in Manhattan.	[REDACTED]
K.SGT Ari Levine	Abuse: Sergeant Ari Levine searched § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On January 21, 2018, § 87(2)(b) filed this complaint with the CCRB via the call processing system.

On January 20, 2018, at approximately 5:30 a.m., Detective Andrew Miles of the 30th Precinct, Sergeant Ari Levine of Criminal Intelligence Section, and officers from the 30th Precinct entered § 87(2)(b) in Manhattan pursuant to a search warrant (**Allegation A, Allegation B, and Allegation C: Abuse of Authority, § 87(2)(g)**). Officers searched the apartment (**Allegation D, Allegation E, and Allegation F: Abuse of Authority, § 87(2)(g)**). During the search of the residence, officers allegedly damaged § 87(2)(b) sofa (**Allegation G: Abuse of Authority, § 87(2)(g)**). No contraband was recovered and no arrests were made.

Later that same date, at approximately 7:00 a.m., Det. Miles and Sgt. Levine returned to the residence to look for a flashlight that Det. Miles had left during the search. Det. Miles and Sgt. Levine allegedly entered the apartment without consent and searched two bedrooms (**Allegation H, Allegation I, Allegation J and Allegation K: Abuse of Authority, § 87(2)(g)**). The officers did not find the flashlight and left the residence.

The investigation did not locate video evidence pertaining to this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Officers entered § 87(2)(b) in Manhattan.

Allegation (B) Abuse of Authority: Sergeant Ari Levine entered § 87(2)(b) in Manhattan.

Allegation (C) Abuse of Authority: Detective Andrew Miles entered § 87(2)(b) in Manhattan.

Allegation (D) Abuse of Authority: Sergeant Ari Levine searched § 87(2)(b) in Manhattan.

Allegation (E) Abuse of Authority: Detective Andrew Miles searched § 87(2)(b) in Manhattan.

Allegation (F) Abuse of Authority: Officers searched § 87(2)(b) in Manhattan.

It is undisputed that on January 20, 2018, at approximately 5:30 a.m., officers, including unidentified officers from the Emergency Services Unit, Sgt. Levine, and Det. Miles, entered and searched § 87(2)(b), in Manhattan pursuant to Search Warrant § 87(2)(b) § 87(2)(b).

§ 87(2)(b)

§ 87(2)(g)

Allegation (G) Abuse of Authority: Officers damaged § 87(2)(b) property.

During her testimony to the CCRB on February 9, 2018, § 87(2)(b) alleged that after the officers had searched her home, she discovered that the leg of her couch had been damaged in a manner that caused it to lean as a result (Board Review 01). Although § 87(2)(b) provided documentation of the damage to her door, she stated that she did not take any photographs to document the damage to the couch. In a follow up telephone call on February 23, 2018, she indicated that the position of the couch made it difficult to take such a photograph (Board Review 10).

Det. Miles stated that during the incident § 87(2)(b) claimed that there was damage to the rear left leg of the couch (Board Review 04). However, Det. Miles stated that he did not observe the couch being damaged nor did he know how the couch could have been damaged during the search. No other officers informed him about damage to the couch.

Sgt. Levine denied being aware of any damage to § 87(2)(b) sofa during his CCRB interview (Board Review 05).

§ 87(2)(g)

Allegation (H) Abuse of Authority: Detective Andrew Miles entered § 87(2)(b) in Manhattan.

Allegation (I) Abuse of Authority: Sergeant Ari Levine entered § 87(2)(b) in Manhattan.

Allegation (J) Abuse of Authority: Detective Andrew Miles searched § 87(2)(b) in Manhattan.

Allegation (K) Abuse of Authority: Sergeant Ari Levine searched § 87(2)(b) in Manhattan.

It is undisputed that the execution of the search warrant in this incident did not result in the recovery of any contraband. It is also undisputed that Det. Miles and another officer returned to the residence after the execution of the warrant in search of a flashlight which Det. Miles believed he had left behind during the search. It is undisputed that § 87(2)(b) did not object to the officers' second entry.

In her CCRB statement, § 87(2)(b) described two heavyset officers who participated in the initial search of her residence (Board Review 01). One was described as a white male in his fifties, who may have been bald, with a heavy build that was a mix of muscular and chubby. The second officer was described as a white male in his forties who was slightly shorter and smaller than the first officer, but with a similar build. § 87(2)(b) stated that these two officers spoke to her about the reason why officers were searching her residence and asked her to sign a copy of the warrant. § 87(2)(b) also described these officers as being together throughout the interaction as if they were partners.

Within an hour of officers initially leaving the apartment, § 87(2)(b) stated that these same two officers returned to the residence. At the time, § 87(2)(b) was with the building's porter, who was repairing the door which had been damaged by the officers' entry. The officers asked her if she

had seen a flashlight in the apartment. § 87(2)(b) replied that she had not. The officers then entered the residence and searched unknown sections of the home for approximately fifteen minutes. In a subsequent telephone statement, § 87(2)(b) provided additional details regarding the entry, noting that the officers entered through the opened door that was being repaired by the porter (Board Review 09). The officers did not seek consent to enter the apartment and § 87(2)(b) did not protest the officers' entry.

§ 87(2)(b) initial phone statement was generally consistent with her verified interview; however, § 87(2)(b) only alleged that one officer searched her apartment for a flashlight in her phone statement (Board Review 02). § 87(2)(b) did not respond to attempts to contact her for additional information about the officers' second entry.

On April 12, 2018, § 87(2)(b) the porter who was on duty during the incident, provided a telephone statement in Spanish. § 87(2)(g) § 87(2)(b) stated that as he was repairing § 87(2)(b) door, which was damaged prior to any officers entering the apartment, three officers approached him, told him to stop working on the door, and obtained his contact information. After § 87(2)(b) observed numerous officers enter and depart from the apartment, § 87(2)(b) received a call stating that he could continue to repair the door. § 87(2)(b) later witnessed two of the same officers who had initially approached him heading back towards § 87(2)(b) apartment. § 87(2)(b) however, denied that he was in the process of repairing the apartment door when the officers returned, and stated that he did not see them enter the apartment or know why they had returned.

The investigation also spoke to the superintendent of the building, § 87(2)(b) who denied being present during the incident (Board Review 11).

Det. Miles stated that prior to the initial entry into § 87(2)(b) apartment, he and Sgt. Levine prepared the way for ESU by holding open the front door of the building, as well as the vestibule and elevator doors. The ensuing search returned negative results for contraband. Prior to leaving the residence, Det. Miles notified the superintendent, who repaired § 87(2)(b) door in his presence. Approximately 20 minutes after leaving the residence, Det. Miles realized that he had left his flashlight inside § 87(2)(b) apartment. Det. Miles then returned to the apartment with another officer and knocked on the door. Det. Miles could not recall the identity of this officer or describe them aside from stating it was an officer from his precinct with whom he worked regularly. Det. Miles stated that the door was closed at the time of his return, but claimed that the superintendent was present and working to ensure that the door was functional. Det. Miles knocked on the door and when § 87(2)(b) answered, he explained that he had left his flashlight in the residence and asked if he could look for it. § 87(2)(b) then invited him into the residence. Det. Miles then entered the residence while the other officer remained in the hallway. After looking for the flashlight in § 87(2)(b) bedroom, Det. Miles left the location. Det. Miles noted that § 87(2)(b) never objected to his second entry into the residence. Det. Miles later found the flashlight in a bag he was carrying during the incident.

Sgt. Levine stated in his CCRB interview that prior to the initial entry, Sgt. Levine led members of ESU up to § 87(2)(b) residence to point out § 87(2)(b) door. Sgt. Levine had no

conversation with a porter or any building staff prior to the entry. Sgt. Levine was not accompanied by anyone except ESU, and Det. Miles was holding open the front door of the building at this time. Upon returning to his office at the 30th Precinct Stationhouse following the execution of the warrant, Det. Miles informed him that he believed he had left his flashlight at § 87(2)(b) residence. Later on that date, Det. Miles informed Sgt. Levine that he had returned to the residence with another officer from the 30th Precinct, at which time he asked for and received consent to conduct a second search of the residence. Sgt. Levine was not aware of who accompanied Det. Miles on his return to § 87(2)(b) residence. Sgt. Levine stated during his interview that because the search warrant had been fully executed prior to Det. Miles' return, the search warrant would "obviously" not cover the second entry.

§ 87(2)(g)

[REDACTED]

In People v. Hodge, 44 NY2d 553 [1978], the New York Court of Appeals held that "all warrantless searches presumptively are unreasonable per se" (Board Review 15). However, in People v. Cosme, 48 NY2d 286 [1979], the Court also held that "it is well settled that the police may lawfully conduct a warrantless search when they have obtained the voluntary consent of a party who possesses the requisite degree of authority and control over the premises or personal property in question" (Board Review 14).

In People v. Smith, 239 AD2d 219 [1st Dept 1997], the Supreme Court of New York, Appellate Division, First Department ruled that implied consent could be established when "defendant engaged in a discussion with the officer from inside the apartment...complied with the officer's request for identification without hesitation and [did not raise the] lightest objection to the officer's entry or continued presence in the apartment" (Board Review 06). In People v. Davis, 120 AD2d 606 [2d Dept 1986], the Supreme Court of New York, Appellate Division, Second Department held that "stepping aside from the door to admit the officers is enough to establish consent" (Board Review 07).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed no prior complaints with the CCRB (Board Review 12).
- Sergeant Ari Levine has been a member of service for 13 years. This is the first CCRB complaint to which he has been a subject.
- Detective Andrew Miles has been a member of service for 11 years, and has been the subject of five additional allegations in three incidents. None of these allegations were substantiated § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to property damage.
- § 87(2)(b) has not filed a notice of claim pertaining to this incident (Board Review 11)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 16

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date

